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| 10/560,489   | 04/27/2006  | Grant Thomas Rawlin  | 2354/350            | 3126             |
| 7590<br>Gunnar G. Leinberg<br>Nixon Peabody<br>Clinton Square<br>P O Box 31051<br>Rochester, NY 14603-1051 |             |                      |                     |                  |
| EXAMINER   |             |                      |                     |                  |
| SANDERSON, JOSEPH W  |             |                      |                     |                  |
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/560,489

**Applicant(s)**

RAWLIN ET AL.

**Examiner**

Joseph W. Sanderson

**Art Unit**

3644

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 02 February 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1, 4-20 and 22-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 4-20 and 22-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1, 4-20, 22 and 23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 cites “providing a pressure equalizing port” in the last line, however this renders a method step within an apparatus claim. The claim is therefore indefinite as the scope of the claim cannot be entirely ascertained (i.e. whether apparatus or method).

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 4-9, 13 and 15-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Huber (US 3 032 037).

Regarding independent claim 1 and claims 5 and 6:

Huber discloses an apparatus capable for use with a milking machine comprising one or more teat cups and a vacuum source providing a pulsed vacuum in the teat cups, for collecting a small volume of liquid for cold storage, the apparatus comprising:

a lay flat flexible bag (10) comprising a collar (10x) defining an opening;

a housing (20) for the flexible bag comprising an inlet conduit (29) extending into the housing for receiving the liquid from the one or more teat cups and comprising an opening (26) within the housing for delivering the liquid;

a port (31) configured to provide a pulsating vacuum within the housing from said vacuum source (the pulsating vacuum itself is not actively claimed, requiring the port only have the capability of providing a pulsating vacuum if one were present); and

a retaining system (14 and 15) that retains the collar of the flexible bag about the inlet conduit so that the bag receives liquid from the inlet opening; and

a transfer system (see below) that transfers the vacuum from the port for providing a vacuum within the housing to the inlet conduit when the collar of the flexible bag is retainable about the inlet conduit by the retaining system, the transfer system comprising a space between the collar and inlet (29 enters 14 through 16, rendering a space between 29 and 10x) with the conduit extending into the bag.

Regarding claims 4, 7 and 16:

The discussion above regarding claims 1 and 6 is relied upon.

Huber discloses the collar as relatively rigid compared to the flexible bag (no movement vs. much movement as shown by the solid and dotted lines), sufficiently rigid to maintain its shape, and comprising a flange (portion wrapped about top of 25) to cooperate with the retaining system to retain the collar.

Regarding claim 8:

The discussion above regarding claim 7 is relied upon.

Huber discloses a lay flat bag (as in Fig 8).

The claim is a product-by-process claim, and only the resulting structure is considered.

Regarding claim 9:

The discussion above regarding claim 1 is relied upon.

Huber discloses the housing as sufficiently rigid to retain shape under vacuum (claim 12).

Regarding claim 13:

The discussion above regarding claim 1 is relied upon.

Huber discloses the housing comprising a lid (20c) forming the top wall and a body (20a) forming side and bottom walls.

Regarding claim 15:

The discussion above regarding claim 1 is relied upon.

As best understood, Huber discloses the retaining system as above regarding claim 1.

Regarding claim 17:

The discussion above regarding claim 1 is relied upon.

Huber discloses the bag comprising an internal pocket (a portion of the inside of the bag) to allow sampling of the contents.

Regarding claim 18:

The discussion above regarding claim 17 is relied upon.

Huber discloses a pocket (as noted above).

The claim is a product-by-process claim, and only the resulting structure is considered.

### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1, 5, 6, 10-12, 14, 17, 19, 23 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Todd et al. (WO 1996/008441) in view of Huber ('037).

Regarding independent claim 1, and claims 5 and 6:

Todd discloses an apparatus for use with a milking machine comprising one or more teat cups and a vacuum source providing a pulsed vacuum in the teat cups, for collecting a small volume of liquid for cold storage, the apparatus comprising:

a flexible bag (200; made from a “non-rigid plastic material,” page 4, lines 10-11) comprising a collar (210) defining an opening;

a housing (100) for the flexible bag comprising an inlet conduit (119) extending into the housing for receiving the liquid from the one or more teat cups and comprising an opening (through which the conduit extends) within the housing for delivering the liquid;

a port (107) for providing a vacuum within the housing from said vacuum source; and

a retaining system (lug around 117, at minimum) that retains the collar of the flexible bag about the inlet conduit so that the bag receives liquid from the inlet opening; and

a transfer system (see below) that transfers the vacuum from the port for providing a vacuum within the housing to the inlet conduit when the collar of the flexible bag is retainable about the inlet conduit by the retaining system, the transfer system comprising a space between the collar and inlet (as seen in Fig 1, a space surrounds the inlet conduit) with the conduit extending into the bag.

Todd does not specifically disclose a lay flat bag.

Huber discloses a bodily fluid collection system using a lay flat bag (as variously seen but best depicted in Fig 8).

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to have modified Todd to use a lay flat bag as taught by Huber for the well-known predictable advantage of providing easy storage of the bags when not in use.

Regarding claims 10-12:

The discussion above regarding claim 1 is relied upon.

Todd as modified renders the bag holding 20 liters (a “20 liter jerry can”).

Regarding claim 14:

The discussion above regarding claim 12 is relied upon.

Todd as modified renders a lid (109) comprising a fluid inlet (the opening for the fluid) comprising a conduit (the inlet conduit) extending down from the wall of the lid to provide an inlet port, but does not disclose the lid containing the port for providing the vacuum.

Todd discloses an alternative embodiment wherein the vacuum port is in the lid (Fig 1).

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to have modified Todd to locate the vacuum port in the lid as taught by Todd as this is a well-known predictable functionally equivalent position for providing a vacuum force in the container.

Regarding claim 17:

The discussion above regarding claim 1 is relied upon.

Todd as modified renders the bag comprising an internal pocket (a portion of the inside of the bag in the handle of the bag) to allow sampling of the contents.

Regarding claim 19:

The discussion above regarding claim 17 is relied upon.

Todd as modified renders the pocket as less than 5% of the total volume.

Regarding claim 23:

The discussion above regarding claim 1 is relied upon.

Todd as modified renders collecting colostrum, which may be considered "specialty milk," and is deemed to meet the claim as there is no specific action particularly required when this milk is collected.

7. Claims 24-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Todd et al. ('441) in view of Huber ('037) and Prentiss (US 6 440 100).

Regarding independent claim 24:

The discussion above regarding claim 1 is relied upon for the structure and steps common to the claims.

Todd does not disclose transferring a pulsating vacuum.

Prentiss discloses a fluid collection system whereby either constant or pulsating pressures may be used to extract the fluid to be obtained (col 4, lines 37-40; col 5, lines 6-10).

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to have further modified Todd to use a pulsating vacuum as taught by Prentiss as this is an art-recognized alternative method for extracting fluid to be obtained.

Regarding claim 25 and 26:

The discussion above regarding claims 1 and 24 is relied upon.

Todd as modified renders a pressure oscillation system (to provide the pulsating vacuum).

8. Claims 20-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Todd et al. ('441) in view of Huber ('037) as applied to claim 1 above, and further in view of Karnath et al. (US 3 242 903).

Regarding claim 20:

Todd as modified renders a fluid collector for a milking machine comprising a plurality of teat cups (page 6, lines 5-6) a vacuum source for applying a vacuum to the teat cups (page 6, lines 5-7), and a vacuum line for providing the vacuum (connected to 117), but does not specifically disclose a reservoir for collecting relatively large volumes of milk.

Karnath teaches a milking machine which separates out a small amount of liquid having a reservoir for larger amounts of liquid (20).

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to have further modified Todd to use the components of Karnath for the advantages of collecting the main milk supply for use rather than merely sample, and to further distribute the milk supply into smaller containers for ease of shipping, distribution, storage, etc.

Regarding claim 22:

The discussion above regarding claim 20 is relied upon.

Todd as modified renders discloses an apparatus for collecting liquids, but does not disclose a case for freezing the liquids to provide a thickness of less than 20 cm.

The examiner takes Official Notice that freezers are well-known in the art as cases for freezing liquids for later use.

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to have further modified Todd to freeze the liquid in a freezer as the examiner takes Official Notice that freezers are well-known in the art for freezing liquids for later use. The failure to traverse the Official Notice in the response renders the teaching **admitted prior art**. See MPEP 2144.03.

Further, it would have been an obvious matter of design choice to ensure the filled and frozen bags did not expand past 20 cm, since applicant has not disclosed that this thickness solves any stated problem or is for any particular purpose and it appears that the invention would perform equally as well with the frozen bags as provided by the modified Todd device.

***Response to Arguments***

9. Applicant's arguments filed 2 February 2010 have been fully considered but they are not persuasive.

In response to applicant's argument that Huber and Todd do not disclose a pulsating vacuum, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. The references provide the claimed ports which are "configured to provide" a pulsating vacuum, should one be present, as they are ports for transferring vacuums.

10. Applicant's further arguments with respect to claims 1, 24 and dependencies have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph W. Sanderson whose telephone number is (571)272-6337. The examiner can normally be reached on M 6:30 am - 11:30 am, t-F 6:30 am - 300 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Timothy D. Collins can be reached on (571)272-6886. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/J. W. S./  
Examiner, Art Unit 3644

/T. T. N./  
Primary Examiner, Art Unit 3644